HUMAN RIGHTS WATCH

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To: Mr Klaus Wiedner

Director, Financial Stability, Sanctions and Enforcement (FISMA.E), DG for Financial Stability, Financial Services and Capital Markets Union

European Commission
Rue de Spa 2, 1000 Bruxelles

HUMAN RIGHTS WATCH

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CC:

Simon Mordue, Deputy Secretary General for Economic and Global Issues at the European External Action Service

Ambassadors to the Political and Security Committee of the European Union

Brussels, November 19, 2024

RE: US sanctions relating to the International Criminal Court

Dear Mr. Wiedner,

We are writing to urge swift action from the European Commission to defend and protect the International Criminal Court (ICC) from the effects of potential sanctions by the United States against the court, its officials, and those cooperating with it. In particular, we call on the Commission to prepare for and support the activation of the EU's Blocking Statute in response to emerging threats of sanctions against the court.

All 27 EU states are members of the court and the EU has staunchly supported the ICC since it was established. In a 2011 Council Decision, the EU and member states committed to "preserve and respect the Court's independence and the integrity of the Rome Statute", the court's founding treaty. In 2023, Council Conclusions noted that "any threat against the Court, its staff and those involved in the work of the ICC is unacceptable."

Strong political commitment should be matched with concrete actions. In this regard, the Commission's Financial Stability, Sanctions and Enforcement division has a unique role to play to protect the court and ensure that it is able to exercise its crucial mandate of delivering justice to victims of serious crimes.

In recent years, the court's expanding work has attracted increased politicized opposition, threats, and attacks from a number of actors who fear its reach. On May 20, the ICC prosecutor announced that he was seeking arrest warrants against three Hamas leaders and two senior Israeli officials for alleged crimes committed since October 7, 2023, in relation to his ongoing Palestine investigation. On June 4, on the heels of the prosecutor's announcement, the US House of Representatives passed a bill aimed at imposing sanctions on foreign persons directly engaged with or supporting the ICC's efforts to investigate, arrest, detain, or prosecute a US citizen, entity, or person living in

the US, or a citizen or resident of a US ally. The bill provides for asset freezes and entry bans, echoing a sanctions regime implemented by the first Trump administration in 2020 and later revoked by President Joe Biden in 2021.

US sanctions against ICC officials could seriously impede the work of the ICC. The effects of sanctions would not be limited to the individuals targeted but could have wide-reaching consequences. Service providers to the ICC—from banks to vending machine companies— could reassess the risk of inadvertently violating US sanctions and preemptively refuse to deal with transactions involving the ICC. Sanctions against the ICC as an institution would pose graver challenges. In addition, the 2020 sanctions regime was aimed at and created apprehension and uncertainty for nongovernmental organizations, consultants, and lawyers who work with the ICC.

The EU and its member states have the expertise, strategies and tools to protect the court. These include concrete steps that the Commission can take to mitigate the negative effects of potential US sanctions targeting the ICC. The EU Blocking Statute is a crucial tool that the Commission should swiftly activate once potential sanctions are imposed. The Blocking Statute can provide essential protection and send a powerful message that the EU and its members will not tolerate efforts to undermine the court. To this end, we urge the Commission to:

- Urgently consider and begin the necessary preparatory work to be able swiftly activate the EU Blocking Statute as soon as needed;
- Mitigate potential shortcomings of the Blocking Statute building on lessons learnt from its implementation practices to date to ensure that its future implementation guarantees necessary protection to the European operators against extraterritorial sanctions;
- Consider and develop any other relevant measures to protect the court, its officials, and those cooperating with it from the effects of potential sanctions;
- Encourage EU member states to adopt and implement protective measures at the national level.

We are at a critical juncture for the ICC, a cornerstone of the rules-based international order. The willingness of the EU and its member states to attach consequences to coercive measures against the court is critical to supporting the global effort to protect and enforce international law, and advance justice for victims of serious crimes, regardless of where they are committed and by whom. As a crucial part of broader efforts to protect victims' access to justice before the ICC, the European Commission should expeditiously prepare to activate the Blocking Statute in case of potential US sanctions.

We remain available to provide any further information and to discuss further this matter.

Thank you for your consideration,

Elizabeth Evenson
International Justice Director
Human Rights Watch